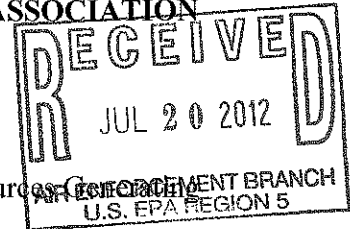


**NATURAL RESOURCES DEFENSE COUNCIL • ENVIRONMENTAL LAW & POLICY  
CENTER • SIERRA CLUB • RESPIRATORY HEALTH ASSOCIATION**

July 17, 2012



Lisa Jackson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Ameren Energy Resources Company, LLC  
300 Liberty Street  
Peoria, IL 61602

John J. Kim  
Interim Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

Susan Hedman, Administrator  
U. S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

Steven R. Sullivan  
Chairman  
Ameren Energy Resources Company, LLC  
Ameren Energy Generating Company  
1901 Chouteau Avenue  
St. Louis, MO 63103

JUL 19 2012

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Re: 60-day Notice Of Intent To Sue Ameren Energy Resources Company, Ameren  
Energy Generating Company, and Ameren Energy Resources Generating  
Company, LLC

Dear Administrator Jackson, Regional Administrator Hedman, Mr. Kim, and Mr. Sullivan; and  
to whom it may concern at Ameren Energy Resources Generating Company:

On behalf of Natural Resources Defense Council ("NRDC"), Environmental Law and  
Policy Center ("ELPC"), Respiratory Health Association ("RHA"), and Sierra Club (collectively,  
"Plaintiff Groups"), we are writing to provide notice that we intend to file a federal Clean Air  
Act ("CAA") citizen suit against Ameren Energy Resources Company ("AER"), Ameren Energy  
Generating Company ("AERG"), and Ameren Energy Resources Generating Company, LLC.  
("AERG") (collectively, "Ameren"). Ameren owns and operates, via its various constituent  
companies, a coal-fired power plant in Illinois that has repeatedly violated – and continues to  
violate – requirements of the Clean Air Act ("CAA"), Illinois' State Implementation Plan  
("SIP"), and the plant's operating permit. These violations have injured the health, aesthetic, and

economic interests of the above-named organizations and their members. This notice is being provided pursuant to 42 U.S.C. § 7604(a)(1), 42 U.S.C. § 7604(b)(1)(A), and 40 C.F.R. Part 54. The names and addresses of the organizations giving notice are listed at the end of this letter.

## **BACKGROUND**

AER owns the coal-fired power plant known as the E.D. Edwards Generation Plant, located at 7800 South Cilco Lane, Bartonville, IL 61607 ("Edwards" or "Facility"). The Facility includes coal-fired boiler units 1, 2, and 3. The Facility's identification number is 143805AAG.

The Facility is a "major source" as defined by 42 U.S.C. § 7661(2) and 40 C.F.R. § 70.2.

## **VIOLATIONS OF THE CLEAN AIR ACT**

### **A. Applicable Standards**

The SIP-approved Illinois regulations provide that, for any fuel combustion emission unit for which construction or modification commenced before April 14, 1972 (as is the case for the Facility),

The emission of smoke or other particulate matter from any such emission unit may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such opaque emissions permitted during any 60 minute period shall occur from only one such emission unit located within a 305 m (1000 ft) radius from the center point of any other such emission unit owned or operated by such person, and provided further that such opaque emissions permitted from each such emission unit shall be limited to 3 times in any 24 hour period."

35 Ill. Adm. Code § 212.123.

The Illinois SIP provides in addition, regarding opacity emissions, that the opacity limitations set forth in § 212.123 "shall apply during times of startup, malfunction and breakdown except as provided in the operating permit." 35 Ill. Adm. Code § 201.124. Where a permit grants permission to operate during startup, malfunction and breakdown ("SMB") notwithstanding opacity exceedances, full compliance with any terms and conditions associated with such permission constitutes an affirmative defense to enforcement. 35 Ill. Adm. Code § 201.265.

The Facility is subject to an operating permit issued by the Illinois Environmental Protection Agency ("IEPA") that regulates, *inter alia*, percentage opacity ("Permit"). Paragraph 3 of the Permit provides in relevant part, "emissions and opacity from the boilers shall comply with the standards of general applicability for existing coal-fired boiler [sic]." Paragraph 5a of the Permit provides in relevant part, "Operation in excess of applicable opacity . . . standards is allowed during periods of startup, malfunction, and breakdown." Paragraph 5c of the Permit provides in relevant part, "the Permittee shall notify the Illinois EPA's Regional Office by telephone as soon as possible during normal working hours upon the occurrence of excess

emissions due to malfunctions or breakdowns." Paragraph 5d of the Permit provides that the Permittee "shall maintain records of excess emissions during malfunctions and breakdowns," and specifies the five types of information that must be included. Paragraph 5e requires that these records be maintained for a period of at least two years.

In addition, 35 Ill.Admin.Code § 212.124 provides in relevant part as follows:

2) For all emission units which are not subject to Chapters 111 or 112 of the CAA but which are subject to Sections 212.201, 212.202, 212.203 or 212.204 of this Part:

A) An exceedance of the limitations of Section 212.122 or 212.123 of this Subpart shall constitute a violation of the applicable particulate limitations of Subparts D through T of this Part. It shall be a defense to a violation of the applicable particulate limitations if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions for the unit and the control devices, and in accordance with Method 5, 40 CFR part 60, incorporated by reference in Section 212.113 of this Part, the owner or operator shows that the emission unit is in compliance with the particulate emission limitations.

B) It shall be a defense to an exceedance of the opacity limit if, during a subsequent performance test conducted within a reasonable time not to exceed 60 days, under the same operating conditions of the emission unit and the control devices, and in accordance with Method 5, 40 CFR part 60, Appendix A, incorporated by reference in Section 212.113 of this Part, the owner or operator shows that the emission unit is in compliance with the allowable particulate emissions limitation while, simultaneously, having visible emissions equal to or greater than the opacity exceedance as originally observed.

This provision applies to the Edwards Facility because it is not subject to Chapter 111 of the Clean Air Act (New Source Performance Standards), and will not be subject to Chapter 112 of the Act (Hazardous Air Pollutants) until four years hence, the date it is required to comply with federal air toxics standards pursuant to the Mercury and Air Toxics Rule standards issued by U.S. EPA. 35 Ill. Adm. Code §§ 212.202 and 212.203, incorporated by reference into the Permit at Paragraph 2, set forth the particulate matter standards applicable to the Facility.

Each of the operating permits requires that Midwest Generation submit quarterly Excess Opacity Reports ("Reports") listing all exceedances of the specified opacity limitation. As described below, the Reports show that these units have repeatedly violated the opacity limitations set forth in Illinois law and in their operating permits. → American

## **B. Non-SMB Opacity Violations**

Under the standard set forth in 35 Ill. Adm. Code § 212.123, an opacity exceedance constitutes a violation of that provision, and hence of the Permit pursuant to Paragraph 3, if it falls into one or more of the following categories:

1. The exceedance is greater than 60% opacity.
2. The exceedance(s) are greater than 8 minutes in aggregate duration within any 60-minute period ("8-Minute Exemption").
3. The exceedance occurs when there have already been three 8-Minute Exemption exceedances within 24 hours.
4. The exceedances occurred, regardless of duration, from more than one stack within a 60-minute period.<sup>1</sup>

Exhibit 1, an Excel spreadsheet accompanying this notice letter in electronic form, sets forth each of the exceedances from August, 2007 through the present that fall into the above four categories, and that were not identified in the Reports as having been caused by SMB (so as to potentially qualify for the affirmative defense referenced in 35 Ill.Admin.Code. § 212.265, *see* subsection 3 *infra*). They are broken down as follows:

- Sheet 1: "CS1 Exceedances." All exceedances from Common Stack 1 that fall into violation categories 1-3 above.
- Sheet 2: "Unit 3 Exceedances." All exceedances from the Unit 3 stack that fall into violation categories 1-3 above.
- Sheet 3: "Multi-Stack Exceedances." All exceedances from either stack that fall into violation category 4 above.
- Sheet 4: "Exceedance totals." Summary totals of violations from Sheets 1, 2, and 3.

As shown on Sheet 4, during the relevant time period there were 1,620 violations in categories 1-3 and 53 violations in category 4, for a total of 1,673 violations.

## **C. SMB Opacity Violations**

As set forth in 35 Ill.Admin.Code. § 212.265, a permittee is entitled to claim an affirmative defense to a violation where, as here, the permit allows operation during periods of SMB only if it is in "full compliance with any terms and conditions associated with such permission." Here, Ameren was not in full compliance with the terms and conditions associated with operation during periods of SMB, and therefore is not entitled to claim the affirmative defense for the violations of its opacity limit that occurred during such periods.

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<sup>1</sup> Under 35 Ill.Admin.Code 212.123, the two stacks in question must be within 1,000 feet of each other. On information and belief, the two stacks at issue here (Common Stack 1 and Unit 3) are less than 1,000 feet apart.

Exhibit 2, an Excel spreadsheet accompanying this notice letter in electronic form, sets forth each of the exceedances from August, 2007 through the present that fall into the above four categories, and that were identified in the Reports as having been caused by SMB.<sup>2</sup> They are broken down as follows:

- Sheet 1: "CS1 SMB Exceedances." All exceedances from Common Stack 1 that fall into violation categories 1-3 above.
- Sheet 2: "Unit 3 SMB Exceedances." All exceedances from the Unit 3 stack that fall into violation categories 1-3 above.
- Sheet 3: "Multi-Stack SMB Exceedances." All exceedances from either stack that fall into violation category 4 above.
- Sheet 4: "SMB Total Exceedances." Summary totals of violations from Sheets 1, 2, and 3.

As shown on Sheet 4, during the relevant time period there were 533 violations during claimed to have occurred during periods of SMB in categories 1-3 and 13 such violations in category 4, for a total of 546 such violations.

As described above, the terms and conditions associated with Ameren's permission require, *inter alia*, that in the event of an SMB event, Ameren "shall notify the Illinois EPA's Regional Office by telephone as soon as possible during normal working hours upon the occurrence of excess emissions due to malfunctions or breakdowns." Upon information and belief,<sup>3</sup> Ameren did not fulfill this requirement with respect to the exceedances set forth in Exhibit 2. Accordingly, these exceedances do not qualify for the affirmative defense of SMB.<sup>4</sup>

#### **D. Particulate Matter Violations**

As set forth in subsection 1, *supra*, violations of Ameren's opacity limits for the Edwards Facility constitute violations of the particulate matter limitations applicable to the Facility unless within 60 days of any such violation, Ameren conducted a stack test according to the method specified in 35 Ill.Admin.Code § 212.124 which showed the Facility to be in compliance with such limitations. Upon information and belief, Ameren failed to conduct such stack tests for

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<sup>2</sup> In many instances, the cause of an opacity exceedance was listed in the Reports as "startup/shutdown." This creates ambiguity as to whether the exceedance was caused by startup, which qualifies for the potential SBM affirmative defense, or by shutdown, which does not. All exceedances identified by Ameren as caused by "startup/shutdown" are listed in Exhibit 2 rather than Exhibit 1. However, to the extent any of the Exhibit 2 "startup/shutdown" exceedances were caused by shutdown, they would not qualify for the affirmative defense.

<sup>3</sup> A Freedom of Information Act ("FOIA") request to IEPA did not result in production of any indicia that the required phone calls were made by Ameren. Specifically, in a request to IEPA dated November 9, 2011, NRDC requested "All records of telephonic reports made to Illinois EPA (including regional offices) concerning the occurrence of excess emissions at E D Edwards due to malfunctions or breakdowns during the period January, 2005 through the present." No such records were received in response to this request.

<sup>4</sup> Additionally, as discussed in subsection 1 *supra*, paragraphs 5d and 5e of the Permit requires that, following an exceedance that occurs during periods of startup, malfunction, or breakdown, Ameren prepare certain reports and maintain them on site at the facility. Since this paragraph does not require that these records be submitted to IEPA, Plaintiff Groups have no way to know at this time whether Ameren complied with these requirements.

some or all of the violations of the Facility's opacity limits set forth in Exhibits 1 and 2.<sup>5</sup> Accordingly, all such violations of the opacity limit constituted violations of the Facility's applicable particulate matter limit as well.

At the close of this 60-day notice period, the Plaintiff Groups intend to file a citizen suit under 42 U.S.C. § 7604(a)(1) against the Ameren entities for the repeated and ongoing violations listed above. We will seek injunctive and declaratory relief, civil penalties, additional penalties for opacity exceedances previously known to the company and any subsequent exceedances, costs (including attorneys' fees and expert witness fees), and such other relief as may be appropriate.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations identified in this letter. If you wish to pursue such negotiations in lieu of litigation, we suggest you begin those discussions within the next two weeks so they can be completed before the end of the 60-day period. Please do not hesitate to contact any of the undersigned counsel if you have questions.

Sincerely,



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*Attorneys for Natural Resources Defense  
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<sup>5</sup> A FOIA request to IEPA did not result in production of any indicia that the stack tests were conducted. Specifically, on June 12, 2012, ELPC submitted a FOIA request for "All records concerning performance tests at the Subject Plants concerning particulate emissions from January, 2007 through the present." Although IEPA's response to that request may not be complete, we have received no indication that the response will include the requested information.

*Faith E. Bugel*

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*Attorneys for Environmental Law and Policy  
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Association*

**Names and addresses of the organizations joining in this notice:**

**NATURAL RESOURCES DEFENSE COUNCIL**

2 N. Riverside Plaza, Suite 2250  
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**ENVIRONMENTAL LAW AND POLICY CENTER**

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**RESPIRATORY HEALTH ASSOCIATION**

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**SIERRA CLUB**

*Illinois Chapter*

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*Headquarters*

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